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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 393

GYNTHER STORAASLI, *Appellant,*

vs.

THE STATE OF MINNESOTA, *Appellee.*

MOTION TO ADVANCE

PIERCE BUTLER, JR.,
CHARLES BUNN,
Counsel for Appellant.
HENRY N. BENSON,
Attorney General of Minnesota,
JAMES E. MARKHAM,
Deputy Attorney General,
Counsel for Appellee.

LABEAU BRIEF CO., 612 COURT BLOCK, ST. PAUL

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GYNTHER STORAASLI, *Appellant,*

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THE STATE OF MINNESOTA, *Appellee.*

MOTION TO ADVANCE

The parties to this appeal hereby respectfully petition the court to advance this cause upon the docket for hearing upon oral argument at such early date as may meet the convenience of the court. Briefly stated, the pertinent facts are these:

The constitution of the state of Minnesota, as amended in 1920, permits the legislature to provide for the taxation of motor vehicles using the public highways of the state on a more onerous basis than other personal property, the motor vehicle tax, however, to be in lieu of all other taxation of such vehicles. The proceeds of such tax are required to be paid into a special fund devoted to the construction and maintenance of state highways.

Minnesota Constitution, Article 16, Section 3.

Automatic Signal Company v. Babcock, 166 Minn. 416.

The legislature of the state, pursuant to the authority conferred by the constitution as thus amended, adopted chapter 461, Laws 1921, imposing, subject to certain exemption, a specified tax upon all motor vehicles using the public streets or highways of the state, but in lieu of other taxation thereon. The exemption includes vehicles owned and used in the transaction of official business by representatives of foreign powers, by the federal government, the state or any of its political subdivisions, and certain specified threshing machines, farm tractors and other implements of husbandry temporarily moved upon the highway.

This legislation has been sustained as against an attack upon the constitutionality of its provisions.

Dohs v. Holm, 152 Minn. 529.

The statute has been amended from time to time and its provisions in substance are to be found in chapter 13, compiled laws. The prescribed tax accrues on the first day of January of each year.

General Statutes 1923, Section 2690.

This is a proceeding instituted by the registrar of title for the collection of motor vehicle tax claimed to be due from the defendant on account of his ownership and operation of a motor vehicle during the year 1929. The appellant answered in the tax proceedings and resists the enforcement of the tax upon the ground, among others, that he is a nonresident of the state, a commissioned officer of the United States army stationed on the Fort Snelling reservation, in Minnesota, that the vehicle sought to be taxed, while used

by him for his personal convenience, is driven chiefly upon the military roads within the reservation and only occasionally upon Minnesota highways, that the military reservation is a territory solely and exclusively under the control of the government of the United States, that all governmental functions, including the exercise of the police power, traffic control and maintenance of highways, are vested in and exercised by the commanding officer of the reservation under the laws of the United States to the total exclusion of the governmental control of the state, of which it is not a part, that the commanding officer, in pursuance of the power vested in him, has established a complete system of motor vehicle registration within the reservation, and that the vehicle here sought to be taxed has been properly registered in accordance with such laws and regulations, including the issuance thereto of proper number plates which are displayed thereon when the vehicle is in use upon the highways of the reservation and upon the highways of the state, and in effect that because of these things the appellant is privileged to drive his vehicle occasionally upon Minnesota highways pursuant to a special provision in the Minnesota motor vehicle tax law—*General Statutes* 1923, Section 2684—providing in effect that motor vehicles temporarily within the state, owned by nonresidents, properly registered under the laws of the country or the state of the owner, and carrying number plates according to laws of such state, may make temporary use of Minnesota highways without payment of the tax or license fee prescribed by that act. There is the broader contention on the part of the appellant that

as construed by the supreme court of Minnesota the statute imposing this tax is invalid because discriminatory and in violation of the fourteenth amendment to the constitution of the United States.

Upon a hearing in the trial court judgment was given against the defendant for the amount of the tax. The defendant appealed to the supreme court of the state, where the judgment was affirmed. The decision is not officially reported.

State v. Storaasli, 230 N. W. 572.

The vehicle owned by the defendant and taxed in this proceeding is but one of a large number of motor vehicles owned by the officers and men of the garrison stationed at Fort Snelling and against which proceedings for the enforcement of a motor vehicle tax by the state for the year 1929, and again for the year 1930, are now pending, and enforcement proceedings therein have been stayed awaiting the final decision in the case at bar.

The right of the state to impose a substantially similar tax upon vehicles owned and used for their personal use by officers and men employed in the military service and stationed at other military posts throughout the country is raised and pending in other jurisdictions.

See—

Bailey v. Smith, 40 Fed. (2) 958.

The Minnesota laws impose a penalty in a substantial amount for the nonpayment of a motor vehicle tax within

a specified time after it has accrued. Assuming the right to tax the vehicle in question and those belonging to the other officers and men of the garrison, penalties in substantial amounts have become imposed because of the nonpayment by these officers and men of the tax upon their vehicles for the years 1929 and 1930, and penalties will also accrue upon the amount of the annual tax which will accrue on the first day of January of next year.

The orderly enforcement of tax proceedings in Minnesota, as applied to motor vehicle taxes, and the completion of the records of the registrar, will be facilitated by an early decision of this case, and too the appellant and the other officers and men of the command at Fort Snelling, if the right to tax is sustained, will be able to pay the imposed tax without additional penalties which might otherwise accrue.

WHEREFORE, and for the reasons stated, your petitioners pray that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

PIERCE BUTLER, JR.,
CHARLES BUNN,
Counsel for Appellant.

HENRY N. BENSON,
Attorney General of Minnesota,
JAMES E. MARKHAM,
Deputy Attorney General,
Counsel for Appellee.